

VIRGINIA CODE COMMISSION

Thursday, October 1, 2009 – 10 a.m.

General Assembly Building, 6th Floor

Speaker's Conference Room

Richmond, Virginia 23219

MEMBERS PRESENT: John S. Edwards; Jane M. Roush; James F. Almand; Thomas M. Moncure, Jr.; Frank S. Ferguson

MEMBERS ABSENT: R. Steven Landes; Ryan McDougale; William R. Janis; Robert L. Calhoun; E.M. Miller, Jr.

OTHERS PRESENT: Richard L. Walton, Jr., Department of Transportation; Brian Kennedy, LexisNexis; Aris Bearse and Bob Rotz, Joint Legislative Audit and Review Commission;

STAFF PRESENT: Frank Munyan, Mindy Tanner, Jane Chaffin

CALL TO ORDER

Senator Edwards called the meeting to order at 10:10 a.m. Senator Edwards noted that a quorum was not present. A record of the presentations and discussion is presented below.

MINUTES

No changes to the minutes of the July 30 meeting were suggested.

VDOT REQUEST TO CORRECT § 33.1-23.02

Rick Walton, Chief of Policy and Environment at the Department of Transportation, handed out a copy of § 33.1-23.02. Mr. Walton explained that the definition of the term "maintenance" in subsection A was amended by Chapter 9 of the 2006 Special Session I to incorporate "operations" into the definition of "maintenance." Chapter 9 inadvertently omitted a necessary comma so the language in question reads "maintenance replacement operations..." instead of "maintenance replacement, operations..." Mr. Walton is requesting the Commission to consider correcting the Code pursuant to § 30-149.

Jane Chaffin explained that Bill Crammé normally authorizes corrections to the Code of Virginia on behalf of the Commission pursuant to the Commission's authority in § 30-149; however, since there was no information in the drafting file that addressed the intent of the legislation, he felt the correction should be authorized by the Commission.

The Commission members present agreed that the change was necessary and suggested clarifying subsection A of § 33.1-23.02 further by adding punctuation and numbering as follows:

A. For the purpose of this title, unless otherwise explicitly provided, the term "maintenance" shall include (i) ordinary maintenance, (ii) maintenance replacement, (iii) operations that include, but are not limited to, traffic signal synchronization, incident management, other intelligent transportation system functions, and (iv) any other categories of maintenance which may be designated by the Commissioner.

CLARIFICATION TO TITLE 6.1 RECODIFICATION

Frank Munyan presented an update on the recodification of Title 6.1. At the July 30 meeting, chapters were reviewed and posted to the Code Commission website for comment. Mr. Munyan stated that he has received negligible feedback so far. Currently, the draft report and the bill for introduction to the 2010 General Assembly Session are with the Division of Legislative Services' editorial staff and will be ready for the December 3 meeting.

Mr. Munyan presented a clarification issue requested by the State Corporation Commission. The issue relates to 2009 legislation involving changes to existing Chapter 12 of Title 6.1 (proposed Chapter 19 of Title 6.2). The 2009 legislation added § 6.1-378.7 C, which was modeled after section 701(c) of the Uniform Money Services Act (model act) and was sought by the SCC's Bureau of Financial Institutions. The issue is fully explained in a memorandum dated August 12, 2009, from Todd Rose to Frank Munyan, which is incorporated by reference and made a part of these minutes.

Upon further review of the enacted language, the SCC believes that the phrase "shall be held in trust," which was modified from the model act language as a matter of drafting style, could be misinterpreted. SCC is requesting that the Commission consider clarifying the language in the title revision and proposes rephrasing the language to read "shall be deemed by operation of law to be held in trust." Mr. Munyan stressed that there was no intent to change the meaning of the model act, and he does not consider the change to be substantive. He further suggested that handling the change in the recodification would resolve ambiguity and provide clarification, but emphasized that a substantial drafting note would be necessary.

The consensus of the Commission members present was to incorporate the suggested change in the final title revision report. Mr. Ferguson questioned whether the phrase "by operation of law" was necessary and asked Mr. Munyan to research whether the phrase was used elsewhere in Virginia statutes. If not, Mr. Munyan will eliminate the phrase in the final report so that the amendment reads "shall be deemed to be held in trust." (Mr. Munyan later reported that the phrase "deemed by operation of law" was not used elsewhere in the Code of Virginia.)

2010 CODE OF VIRGINIA PRICING AND REPLACEMENT VOLUMES

Brian Kennedy with LexisNexis presented the Code of Virginia proposed replacement volume options and pricing proposal. He stated that the pricing proposal reflects a 5% increase from 2009, which was derived from an analysis of LexisNexis costs and the Producer Price Index for Book Publishing, which has increased 7%.

Mr. Ferguson suggested replacing three volumes as follows: 1B (Alcoholic Beverages to Boundaries), contingent on the passage of the Title 6.1 recodification legislation; 3B (Courts); and 7 (Motor Vehicles).

1 The 2010 supplement pricing with three replacement volumes follows:

	2010 Proposal with Three Replacement Volumes	
	State	Private
Cumulative Supplements	\$185.00	\$239.00
Index	\$ 68.00	\$ 73.00
Replacement Volumes 1B, 3B, 7	\$111.00 (\$37 each)	\$ 139.50 (\$46.50 each)
Volume 11	\$ 28.00	\$ 37.00
Volume 11 Supplement	\$ 9.00	\$ 9.00
Advanced Code Service		\$ 53.00
TOTAL	\$401.00	\$556.50

2 **JLARC BRIEFING - EXEMPTIONS TO THE ADMINISTRATIVE PROCESS ACT**

3 Aris Bearse presented findings of the JLARC Administrative Process Exemption Study, which
4 was conducted under JLARC's mandate (§ 2.2-4005) to periodically review exemptions to the
5 Virginia Administrative Process Act (APA). Although, JLARC's mandate is to review APA
6 exemptions, since agencies often cited the need for fast action as a factor in requesting an
7 exemption, JLARC felt the need to analyze the length of the regulatory process. Key findings
8 include (i) long and unpredictable rulemaking timeframes create incentives for using
9 exemptions; (ii) most exemptions are needed because fast action is required, but not possible
10 through the standard APA; (iii) Executive Branch review delays the rulemaking process, and one
11 aspect of the current Executive Order is inconsistent with the APA; (iv) other states generally
12 have shorter rulemaking timeframes and fewer exemptions than Virginia; (v) a few agencies
13 account for the majority of exempt regulations in Virginia; and (vi) three exemptions should be
14 discontinued and two others modified.

15 Mr. Bearse stated that JLARC received the report at its September meeting. Recommendations
16 will only be implemented if individual legislators submit legislation to bring about the
17 recommended changes.

18 **OBSOLETE LAWS REPORT**

19 Mindy Tanner reported that she researched a number of recommendations for consideration as
20 obsolete laws under § 30-151 of the Code of Virginia. Four sections were referred by the Code
21 Commission or a member of the Commission, and the remaining sections relate to obsolete
22 initial appointment or licensure provisions pertinent to certain regulatory boards under the
23 Department of Professional and Occupational Regulation.

24 Code Commission Member Referrals

25 Based on a referral by Senator Calhoun, the following sections were researched as potential
26 obsolete laws:

- Section 3.2-5141 relates to the general duties of attorneys of the Commonwealth when a violation of the food code is reported by the Commissioner of Agriculture and Consumer Services. The second paragraph provides that the attorney for the Commonwealth prosecuting the case is entitled to a \$10 fee. The Department of Agriculture and Consumer Services (VDACS) was contacted and advised against repealing the section as a whole; however, changing the amount of the \$10 fee does not concern the agency. Ms. Tanner has requested feedback from the Commonwealth's Attorneys' Services Council whose executive director placed the issue on the October 1 meeting agenda of the Virginia Association of Commonwealth's Attorneys Board. Ms. Tanner stated that she would return with the response from the Commonwealth's Attorneys' Services Council at the next meeting.
- Sections 11-15 and 11-16, relate to gaming contracts. These sections have not been amended since 1919, except for renumbering the sections in 1950. Ms. Tanner stated that she consulted with Division of Legislative Services staff attorneys who advised that these sections should remain in the Code because they support the public policy statement against gambling contracts contained in § 11-14. Ms. Tanner recommended leaving these sections in the Code of Virginia.

At the June meeting, the Chair of the Real Estate Section of the Virginia Bar Association addressed the Code Commission regarding the need to recodify Title 55. Section 55-248.1 was noted as an example of an obsolete provision and the Commission referred this section for further review and consideration.

- Section 55-248.1 declares federal rent control as unnecessary and directs the Clerk of the House of Delegates to so notify the Housing Expediter. The section was last amended in 1950. The Housing Expediter was an independent officer of the federal government established under a 1947 executive order. The executive order followed passage of the Veterans Emergency Housing Act of 1946, which included the defense rental area program that controlled rents. This statute appears to represent Virginia's formal notice to the Housing Expediter that the program was no longer needed. The Office of the Housing Expediter was terminated by a 1951 federal executive order. Although some parties might construe repeal of this section as a sign that Virginia would accommodate rent control, the Division of Legislative Services, the Virginia Housing Development Authority, the Department of Housing and Community Development, the Virginia Board of Realtors, and the Virginia Municipal League do not object to the repeal of this section. Ms. Tanner recommends repealing this section as obsolete.

Title 54.1, Department of Professional and Occupational Regulation

Ms. Tanner recommended repealing provisions within several sections of Title 54.1 pertaining to regulatory boards under the Department of Professional and Occupational Regulation:

- Section 54.1-404.1, 54.1-406, 54.1-603, 54.1-2013, and 54.1-2206 contain certain licensure provisions that are obsolete because specified timeframes have passed.

- 1 • Sections 54.1-403, 54.1-702, 54.1-2012, 54.1-2104, 54.1-2210, 54.1-2313, and 54.1-2344
2 contain obsolete language related to the initial appointments of board members.

3 Ms. Tanner recommended repealing § 54.1-404.1 in its entirety and amending the other sections
4 by striking obsolete provisions related to expired timeframes. The Department of Professional
5 and Occupational Regulation and the Division of Legislative Services' staff were consulted and
6 have no objection to the recommendations.

7 **PROPOSED ONLINE CODE OF VIRGINIA DISCLAIMER**

8 Ms. Chaffin presented a draft disclaimer to post on the Code of Virginia webpage. The purpose
9 of the disclaimer is to give notice that the online Code excludes material, such as annotations and
10 revisor's notes, that is copyrighted by the publisher. The notice also provides a link to a list of
11 Virginia public libraries that carry the print edition of the Code of Virginia. Staff was asked to
12 eliminate the reference to the "official" Code and list the publishers that produce an annotated
13 Virginia statutory code. Ms. Chaffin mentioned that the Division of Legislative Automated
14 Systems had recently enhanced the history line at the end of each code section by adding
15 hyperlinks to acts of assembly from 1994 forward.